IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5804 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
SAMARBAHADUR KANHAIYASINH RAJPUT - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/04/2007

ORAL JUDGMENT

1. The petitioner-Corporation has invoked Article 226 of the Constitution to challenge the

award and order dated 17.08.2001 of Industrial Tribunal, Surat in Reference (IT) No.46 of 1993 whereunder the punishment of stoppage of five increments with permanent effect was set aside with cost. The petition could more appropriately have been filed and entertained under Article 227 of the Constitution as no allegation is made against the Industrial Tribunal nor is it joined as a party-respondent.

2. The respondent herein had raised an industrial dispute through a trade union for setting aside the punishment of stoppage of five increments which was imposed on the basis of the accident alleged to have been committed on 04.10.1989 while the respondent was driving the bus and a cyclist was killed in the accident. The chargesheet was issued on 01.12.1989 for negligence in discharge of duty and, after granting to the respondent an opportunity of being heard in the departmental enquiry, punishment was imposed which was confirmed in the

first appeal. Upon the industrial dispute being raised and referred, the respondent had conceded to the legality of the enquiry but contended that the evidence relied upon by the Enquiry Officer was not evidence at all in the eye of law.

3. During the course of arguments, learned counsel Mr.Ashish M. Dagli, appearing for the petitioner, fairly conceded that, as observed in the impugned award, the finding of the Enquiry Officer was based upon the report of the reporter, who was himself not an eye-witness but who had compiled the statements recorded by other officers and relied upon various remarks made by higher officers on the report of the accident. Thus, what was presented to the Enquiry Officer was the opinion of the higher officers on the basis of the reports and such opinion of the higher officers to the effect that the respondent driver had been negligent was accepted as the basis for imposing punishment upon the respondent. Under such circumstances, the

Tribunal arrived at the conclusion that the report or opinion of any officer holding the respondent to be responsible for the accident was accepted as the basis and there was no evidence worth the name of negligence on the part of the respondent. Therefore, the order of punishment was held and declared to be perverse and improper.

4. The petitioner has not placed on record any material to even remotely suggest that there was any reliable material either before the Enquiry Officer or before the Labour Court which could be the basis for holding that there was some evidence or material, which could qualify as evidence admissible in departmental proceedings, to suggest negligence on the part of the respondent. Therefore, the finding of the Tribunal that the order of the Enquiry Officer and the disciplinary authority to impose punishment upon the respondent were perverse could not be

faulted and the petition has to be dismissed as devoid of any substance or merits.

5. It has, however, to be noted that despite the opportunities of leading evidence in support of the charges levelled against the respondent in the departmental enquiry as well as before the Tribunal, the petitioner appears to have consistently failed to bring on record any material, which could have any probative value, for proving that the respondent was negligent in his duty and it was as a result of his negligence that the accident had happened. Even in the present petition, neither the material placed before the Enquiry Officer nor the material placed before the Tribunal is brought on record to suggest or contend that the findings of the Tribunal in the impugned award was itself perverse. Thus, the facts and the proceedings of the case lead to the inescapable conclusion that the petitioner-Corporation is more vigilant about carrying on the litigation rather than proving

its case at any stage. With these observations, the petition is dismissed, Rule is discharged and interim relief is vacated with no order as to costs. It can be hoped that the petitioner would not generate or invite further litigation by not complying, within a reasonable time, with the impugned order of the Tribunal.

(D.H.WAGHELA, J.)

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